

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MARINE POWER & EQUIPMENT
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos. 82-44 & 82-45

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of two \$250 civil penalties for the alleged violations of sections 9.15(a) and 9.03(b) of respondent's Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, David Akana and Lawrence J. Faulk, Board members, with William A. Harrison, Administrative Law Judge, presiding at a formal hearing in Lacey on October 27, 1982.

Respondent was represented by its attorney, Keith D. McGoffin; appellant Marine Power and Equipment Company, Inc., (Marine Power) was represented by its attorney, George S. Martin. Court reporter Dixie

1 J. Catten recorded the proceedings.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 On March 4, 1982, at about 10:00 a.m, after prior notice of
7 inspection to Marine Power, respondent's inspector visited Marine
8 Power's premises located at 6701 Fox Avenue South in Seattle. After
9 being refused entrance to the premises, the inspector visually
10 observed appellant's operations from a public area. The inspector
11 could see an emission visible in the air for 10 to 15 feet from a
12 barge being sandblasted in the open. No shrouds or other pollution
13 control equipment were seen at the work site. After properly
14 positioning himself, the inspector recorded an opacity of 25 to 50
15 percent for eight consecutive minutes. The inspector notified Marine
16 Power of his observations, by mail on March 8, 1982, via notices of
17 violation of section 9.15(a) and 9.03(b) from which followed a \$250
18 civil penalty (Nos. 5461 and 5462) for each alleged violation.

19 II

20 On March 4, 1982, appellant used best known methods and a superior
21 abrasive material (copper) in the open to surface clean the steel
22 sides of a barge. The visible particulate matter (rust) emitted from
23 cleaning the steel surface of this barge remained, for the most part,
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1 on appellant's property. Tarping or shrouding at this place, and in
2 this instance as disclosed by the evidence, was apparently not
3 practical.

4 III

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
6 certified copy of its Regulations I and II which are noticed.

7 Section 9.15(a) makes it unlawful for any person to cause or
8 permit particulate matter to be handled, transported or stored without
9 taking reasonable precautions to prevent particulate matter from
10 becoming airborne.

11 Section 9.03(b) of respondent's Regulation I states:

12 (b) After July 1, 1985, it shall be unlawful
13 for any person to cause or allow the emission of any
14 air contaminant for a period or periods aggregating
15 more than three (3) minutes in any one hour which is:

16 (1) Darker in shade than that designated
17 as No. 1 (20% density) on the Ringelmann Chart, as
18 published by the United States Bureau of Mines; or

19 (2) Of such opacity as to obscure an
20 observer's view to a degree equal to or greater than
21 does smoke described in Subsection 9.03(b)(1);
22 provided that, 9.03(b)(2) shall not apply to fuel
23 burning equipment utilizing wood residue when the
24 particulate emission from such equipment is not
25 greater than 0.05 grain per standard cubic foot.

26 Section 3.29 provides for a civil penalty of up to \$250 per day
27 for each violation of Regulation I.

28 IV

29 Any Conclusion of Law which should be deemed a Finding of Fact is
30 hereby adopted as such.

1 From these Findings the Board enters these

2 CONCLUSIONS OF LAW

3 I

4 Respondent establishes a prima facie case under section 9.15(a)
5 when it shows that a person has caused particulate matter to become
6 airborne. Respondent made such a showing for the event occurring on
7 March 4, 1982. The burden of presenting evidence then shifts to
8 appellant to show that reasonable precautions were taken. Appellant
9 Marine Power's evidence, while not conclusive, was sufficient in this
10 instance and under the facts of this case to show that reasonable
11 precautions were taken. Respondent presented no further evidence,
12 and, on balance, has failed to carry its burden of proof.
13 Accordingly, there was no violation of section 9.15(a) as alleged and
14 the civil penalty No 5462 should be vacated.

15 II

16 We reject appellant's contention that respondent's inspector must
17 compare the Ringelmann Chart to an emission while observing it. The
18 Ringelmann Chart is merely a measure of darkness, section 9.03(b)(1)
19 supra. Opacity which obscures an observer's view to the same degree
20 as that darkness (20% density) is also prohibited. Appellant violated
21 section 9.03(b)(2) on March 4, 1982, as alleged. Accordingly, a civil
22 penalty (No. 5461) was properly assessed, and should be affirmed.

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III

In Marine Power v. PSAPCA, PCHB Nos. 81-141, 142 and 143, a decision of this Board entered on March 23, 1982, we affirmed a prior violation by appellant of the same section 9.03(b) in connection with sandblasting at the same facility. The maximum \$250 which we affirm today is amply justified.

IV

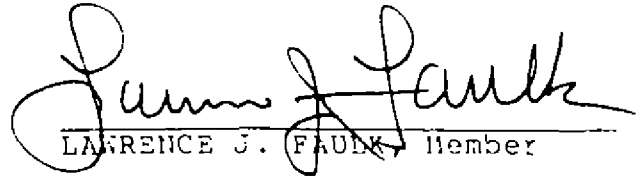
Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

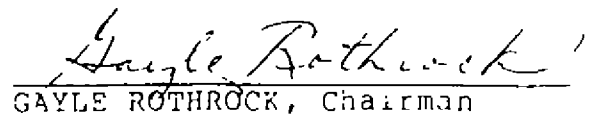
From these Conclusions the Board enters this

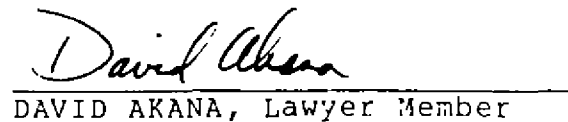
ORDER

Civil penalty No. 5462 assessed on Marine Power and Equipment Company, Inc., is vacated Civil penalty No 5461 is upheld
DONE at Lacey, Washington, this 5th day of November, 1982.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Member


GAYLE ROTHROCK, Chairman


DAVID AKANA, Lawyer Member